

REGISTER NUMBER: 592

NOTIFICATION FOR PRIOR CHECKING

Date of submission: 05/05/2010

Case number: 2010-0340

Institution: EU - OSHA

Legal basis: article 27-5 of the regulation CE 45/2001⁽¹⁾

(1) OJ L 8, 12.01.2001

INFORMATION TO BE GIVEN

Please note that EU-OSHA does not process health data of staff which are exclusively handled by the external medical service providers

1/ Name and address of the controller

European Agency for Safety and Health at Work (EU-OSHA)
Gran Via 33
E - 48009 BILBAO (Spain)

Controller: Françoise Murillo, Head of Resource and Service Centre

2/ Organisational parts of the institution or body entrusted with the processing of personal data

For administrative matters:

EU-OSHA, Resource and Service Centre - Human Resources section

Processor:

Mutualia - Henao, 26 - 48009 Bilbao

Medical adviser:

Dr . Miguel MARTIN - Simon Bolivar 22/4 D - 48013 Bilbao

3/ Name of the processing

Health data of staff employed by the EU-OSHA

4/ Purpose or purposes of the processing

Fulfillment of legal requirement as per the Staff Regulations upon engagement and on annual basis as well as the development of a preventive culture with respect to health.

5/ Description of the category or categories of data subjects

New staff recruited (pre-recruitment visit);
Established staff (annual medical visit, sick leave, invalidity recognition procedure if necessary);
Local staff (annual medical visit).

6/ Description of the data or categories of data (including, if applicable, special categories of data (article 10) and/or origin of data)

1) EU-OSHA - Resource and Service Centre - HR section:

The competency certificate issued after medical visits (pre recruitment and annual), the confidential declaration filled out when taking up duty and the validation of medical certificate by the medical adviser.

2) The external service provider:

The individual medical files with the history of the medical checks of the staff members.

3) The medical adviser:

All medical certificates sent by the staff members in case of sickness.

7/ Information to be given to data subjects

The HR section receives for dispatch the results from the external medical service in separate sealed envelopes addressed to each agent concerned and at no time does it ever have access to personal medical information. It then forwards the envelopes to each staff member of staff accordingly. Moreover the HR section informs each member of staff that if she/he wishes to have additional information or clarification about their medical test results, an appointment with the Agency's medical adviser can be arranged at their request.

The Agency receives certificates from the external medical service confirming the ability. Those certificates of the staff members (after the pre-recruitment check and the annual visits) are filed in the personal file of each staff member.

The external medical service is the only one to have the custody of the medical files (pre-recruitment and annual visits).

8/ Procedures to grant rights of data subjects (rights of access, to rectify, to block, to erase, to object)

Both within the HR section and the medical service, each staff member has free access to his/her own file. The access is based on a personal request and no access to the data of another person is ever granted.

9/ Automated / Manual processing operation

No specific processing operation is developed as the access is only based on a personal request.

10/ Storage media of data

The only information kept at EU-OSHA is the paper certificates (ability) received from the external medical service. Those documents are filed in the Staff member's personnel files stored in a secure locker. In the external medical service, the media support is their own support (the Agency has no direct access). The Agency only requires to the provider to guarantee the security of the storage (see document in Annex from Mutuاليا).

11/ Legal basis and lawfulness of the processing operation

A - Staff Regulation:

- Annual medical visit - Art. 59 (6) of the S.R. as well as Art. 16 (1), 59 and 91 of the CEOS serve as the legal basis for the processing of personal data.

- Pre-recruitment medical exam - Art. 28 and 33 of the S.R. and Art. 12.2 (d), 13 and 83 provide the legal basis for pre-recruitment medical exams.

B - Spanish Law: for Local Staff (one local staff at EU-OSHA)

12/ The recipients or categories of recipient to whom the data might be disclosed

Full details of medical reports are deemed personal and confidential. They are shared/discussed exclusively by the appointed external medical service of the Agency (Mutuاليا), its medical adviser (Dr. Martin) and the concerned agent. The HR section or any other Agency's staff, do not have access to such documentation which in fact is stored at the premises of the external services providers.

The HR section does receive non-medical guidance for administrative purposes (e.g.: entry into service, sick leave confirmation, ...).

13/ retention policy of (categories of) personal data

To date the Agency's external medical services provider established in 1990 has kept all medical records of EU-OSHA staff since it was entrusted to provide this service. Our medical adviser has confirmed a minimum retention period of 30 years is applied at the current medical services provider of the Agency.

There is no recorded evidence of the existence of medical data pertaining to non-recruited persons. In any event, the Agency shall follow the EDP'S advice with regards to applying a retention period for such data.

**13 a/ time limits for blocking and erasure of the different categories of data
(on justified legitimate request from the data subject)
(Please, specify the time limits for every category, if applicable)**

See above

14/ Historical, statistical or scientific purposes

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification,

Not applicable

15/ Proposed transfers of data to third countries or international organisations

No transfer ever requested to date.

Nothing to report.

16/ The processing operation presents specific risk which justifies prior checking (*please describe*):

EU-OSHA does not consider that the processing operation should be subject to prior checking by EDPS as EU-OSHA does not process medical data but is only collecting administration data related to sick leave or ability to work.

This opinion is based on the fact that medical data are exclusively handled by the external medical service providers (Mutualia)

AS FORESEEN IN:

Article 27.2.(a)

Processing of data relating to health and to suspected offences, offences, criminal convictions or security measures,

Article 27.2.(b)

Processing operations intended to evaluate personal aspects relating to the data subject,

Article 27.2.(c)

Processing operations allowing linkages not provided for pursuant to national or Community legislation between data processed for different purposes,

Article 27.2.(d)

Processing operations for the purpose of excluding individuals from a right, benefit or contract,

Other (general concept in Article 27.1)

17/ Comments

1) List of attached documents:

- Template of ability certificate;

- Template of the confidential declaration filled in by staff member;

- Declaration from the external medical providers re the respect of data protection regulation.

2) Please note that, in the near future, the Agency envisaged to sign a SLA with the medical service of the Commission which applies data protection regulation.

PLACE AND DATE: Bilbao, 4 May 2010

DATA PROTECTION OFFICER: this form is submitted by Terry N. Taylor

INSTITUTION OR BODY: EU-OSHA